IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.20 OF 2007

1. Shri Pradeep Chandrakant Indulkar, Age : 42 years, Occupation : Business, residing at 29, Kaushik, Shreenagar, Thane – 400 604.
2. Shri Nitin Shankar Deshpande, Age : 48 years, Occupation : Service, Residing at I/C, 108, Adarsh Nagar, Kolbad, Thane – 400 601.

... Petitioners

Versus

1. The Municipal Corporation of the City of Thane, through the Commissioner, having office at Mahapalika Bhavan, Dr. Almeida Road, Chandanwadi, Panchapakhadi, Thane – 400 601.
2. The Collector, Thane, having office at Netaji Subhash Road, Thane – 400 601.
3. The Central Railway, through the Divisional Manager, having Office at, CST Office, Mumbai – 400 001.

4. The State of Maharashtra, through the Urban Development Department and the Revenue Department, Mantralaya, Mumbai.

5. Nagarjuna Construction Company Limited, having office at, B-402, Dipti House, Off. M.V. Road, Suren Road, Andheri (East), Mumbai – 400 093. ... Respondents

Ms. Gouri Godse for the petitioners.

Mr. R.S. Apte for respondent 1-Corporation.

Ms. J.S. Pawar, A.G.P. for respondents 2 and 4.

Mr. Suresh Kumar for respondent 3.

CORAM : SWATANTER KUMAR, C.J. &
SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 25TH JULY, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 20TH SEPTEMBER, 2007.

JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. In this petition filed under Article 226 of the Constitution of India, the petitioners are seeking an order (i) quashing and setting

aside Resolution No.258 dated 16/11/2006 read with Resolution No.14 dated 16/6/2004 passed by the General Body of the Municipal Corporation of the City of Thane; (ii) quashing and setting aside the decision of the Municipal Corporation of the City of Thane to allot contract of work of construction of the Deck cum Flyover to respondent 5 as per Resolution No.258 dated 18/11/2006 read with Resolution No.14 dated 16/6/2004 passed by the General Body of the Municipal Corporation of the City of Thane.

2. The petitioners are residents of Thane city. Respondent 1 is the Municipal Corporation of City of Thane (respondent 1-Corporation, for convenience) established under The Bombay Provincial Municipal Corporations Act, 1949 (for short, “the said Act of 1949”). Respondent 1-Corporation is also a Planning Authority within the meaning of The Maharashtra Regional and Town Planning Act, 1966 (for short, “the MRTP Act”). Respondent 2 is the Collector of Thane appointed under the provisions of The Maharashtra Land Revenue Code, 1966 (for short, “the said Code

of 1966"). Respondent 3 is the Central Railway through the Divisional Manager, CST Office, Bombay. Respondent 4 is the State of Maharashtra. Respondent 5 is the Nagarjuna Construction Company Limited, who according to the petitioners, is likely to be affected by the orders that may be passed in this petition.

3. According to the petitioners, they have actively participated in various projects in the interest of public at large and the instant petition is filed by them in public interest. It is their case that respondent 1-Corporation has selected an area of 3000 sq. mtrs. for construction of Deck adjoining Platform No.2 of the Railway Station, Subway for Pedestrian Crossing and a Flyover for plying buses from S.T. Stand near Station Road upto Jambhli Naka through Shivaji Path and from Railway Station towards Gokhale Road through Dada Patil Marg. According to the petitioners, the decision to undertake the said project is taken by the General Body of respondent 1-Corporation by passing Resolution No.258 dated 18/11/2006 read with Resolution No.14 dated 16/6/2004. Thereby

respondent 1-Corporation resolved to construct a Deck cum Flyover for implementing traffic control scheme viz. Thane Railway Station Area Improvement Scheme adjoining the Thane Railway Station on the West side of the city of Thane. Resolution No.258 dated 18/11/2006 is hereinafter for the sake of convenience referred to as “the said Resolution”. According to the petitioners, a perusal of the said Resolution shows that respondent 1-Corporation has resolved to construct the Flyover only for plying buses because for plying auto rickshaws and taxis from the Flyover, the height of the Flyover was required to be increased which would obstruct another proposed project of constructing Ring Railway. The said Resolution further states that to avoid any obstruction to the project of Ring Railway, respondent 1-Corporation decided to construct Flyover only for plying buses. The said Resolution further states that auto rickshaws and taxis will ply from below the Flyover. Thus, the Duck cum Flyover will be used only by buses and there will be platforms constructed for boarding the buses. The petitioners contend that the drawing / map of the said project prepared by respondent 1-Corporation

does not provide for any way for private vehicles, fire brigade vans and ambulances. According to the petitioners, if the said project is implemented, the entire area from Jambhli Naka utpo Railway Station through Shivaji Path and from Gokhale Road to Railway Station through Dada Patil Marg will be restricted only for S.T. and TMT buses, taxis and auto rickshaws. The drawing/map also does not provide for the location for constructing pedestrians Subway as stated in the said Resolution.

4. The petitioners submit that a fire brigade van requires open space of approximately a minimum height of 3.5 meters and the geometric salient features prepared by respondent 1-Corporation show that the entire area covered by the Deck cum Flyover does not leave the required open space at the minimum required height for fire brigade van. According to the petitioners, the said Resolution does not even refer to any such provision and/or obtaining clearance from fire brigade department.

5. The petitioners further contend that M.H. High School is

situated at the Shivaji Path from where the low height Flyover will be constructed. The said Resolution does not refer to any safety measures for the said school. It is submitted that the height of the Deck cum Flyover is reduced only for avoiding any obstruction for another proposed project of Ring Railway. The only consideration for passing the said Resolution is huge expenditure of Rs.30.50 crores under the garb of traffic control and further project of Ring Railway which will incur much higher expenditure.

6. According to the petitioners, respondent 1-Corporation has ignored that the area where the ramps of the Deck cum Flyover will be constructed will completely block the road and render it virtually useless. The Deck cum Flyover will start from Station Road near S.T. Stand and one part will end at Dada Patil Marg and another will end at Jambhli Naka. Thus, there will be three ramps. The first ramp will be at Station Road which today actually admeasures 9.75 meters wide out of which 403 sq. meters area will be occupied by ramp i.e. 6.50 meters wide and 62 meters in length. According to the petitioners, thus the width of 6.50 meters of the road will be

completely blocked.

7. The petitioners further contend that similar situation will arise at one end at Dada Patil Marg and another end at Jambhli Naka. The second ramp will be at Dada Patil Marg which today actually admeasures only 9.75 meters wide out of which 231 sq. meters area will be occupied by ramp i.e. 5.50 meters wide and 42 meters in length. Thus the width of 5.50 meters of the road will be completely blocked. The third ramp will be at Jambhli Naka which today actually admesures only 12.8 meters out of which 747.5 sq. meters area will be occupied by ramp 6.5 meters wide and 115 meters in length. Thus, the width of 6.5 meters of the road will be completely blocked. According to the petitioners, all the three areas where the ramps will be constructed are notified as congested areas in the sanctioned development plan and they are always over crowded. Implementation of the said project will only mean shifting and/or exchanging the places of traffic jams and bottle neck areas due to heavy traffic.

8. According to the petitioners, the first end of the Flyover is at Dada Patil Marg, thus the buses will come down from the Flyover and through Dada Patil Marg will go towards Gokhale Road by crossing a narrow turn near one decorative island constructed by respondent 1-Corporation, which also has a lamp post. The said road is today actually admeasuring 9 meters. Near the turning there is also a small temple. Thus, the buses cannot take turn from the said road until the decorative island along with the lamp post and the small temple is removed.

9. It is further contended by the petitioners that the third end of the Flyover is at Jambhli Naka which is a junction from where the traffic is diverted towards city, Eastern Express Highway, Ghodbunder Road, Kalwa, Mumbai Pune Highway, etc. By Resolution dated 22/12/2004 passed by the General Body of respondent 1-Corporation another project to construct an "Attractive Promenade" in the main city of Thane is sought to be implemented. Respondent 1-Corporation has selected Ahilyadevi Road adjoining Masunda Lake on one side and compound wall of

St. John Baptist Church on the other side which is situated in the main city of Thane for the said construction. According to the petitioners, construction of Deck cum Flyover, Hanging Garden and also proposed Ring Railway project in areas notified as congested areas will create chaos.

10. According to the petitioners, as per section 22 of the MRTP Act, a development plan shall generally indicate the manner in which the use of the land in the year of the planning authority shall be regulated and the manner in which development thereof is carried out. Section 22(h) of the MRTP Act provides for reservation, conservation and development of areas of natural scenery and landscape. Section 22(i) provides for preservation of features, structures of places of historical, natural, architectural and scientific interest and educational value. As per section 25 of the MRTP Act, the officer of the planning authority has to carry out a survey of the land within the jurisdiction of the planning authority and prepare the existing land use map. According to the petitioners, the sanctioned development plan shows that the

proposed site selected by respondent 1-Corporation is a D.P. Road having width of 18 meters. However, today, the required width is not in existence at all places and at most of the places there are no footpaths.

11. According to the petitioners, as per section 22(d) of the MRTP Act, the development plan has to indicate transport and communications, such as roads, highways, parkways, railways, etc. including their extension and development. By the said project, all together different mode of transport and communication is sought to be provided and the implementation of the said project will amount to extension and/or development of the roads, which would amount to modification of the development plan. According to the petitioners, respondent 1-Corporation is not entitled to pass the Resolution for construction of Deck cum Flyover without following the procedure under section 37 of the MRTP Act. The petitioners contend that the powers to effect any modification in the sanctioned development plan vests only with the State Government and, thus, the Resolution passed by respondent 1-

Corporation is illegal and not in accordance with law. The petitioners submit that respondent 1-Corporation has passed Resolution No.448 dated 12/11/2001 and further Resolution No.287 dated 18/9/2002 for initiating proceedings under section 37 of the MRTP Act for modification of the sanctioned development plan for construction of Ring Railway and the said proceedings are partly heard and are pending for further hearing. After completing the formality of hearing respondent 1-Corporation is bound to forward the proposal to the State Government for approval under section 37 of the MRTP Act.

12. According to the petitioners, the present proposal for construction of Deck cum Flyover must wait for its implementation till the decision is taken on proposal for Ring Railway. The feasibility of the said project can be decided only by the State Government and if ultimately it is found that the said project affects the project of Ring Railway, the same will amount to curtailing the powers of the State Government. According to the petitioners, the implementation of the Resolution for construction of Deck cum

Flyover above the road amounts to modification of the sanctioned development plan which respondent 1-Corporation is not entitled to do without sanction of the State Government. The said Deck cum Flyover is above the road at the same place where the construction of Ring Railway is proposed and in future if the State Government decides to approve the construction of Ring Railway, implementation of the same will be redundant due to the said Deck cum Flyover.

13. According to the petitioners, if the third end of the Flyover is constructed near Masunda Lake, footpath around the Masunda Lake which is used by senior citizens as well as people belonging to various age groups will be virtually blocked from one side. According to the petitioners, the only intention of respondent 1-Corporation in constructing the Deck cum Flyover is to keep on implementing projects beneficial to the Contractors. The said project is prepared to protect another proposed project of Ring Railway. According to the petitioners, even if the sanctioned development plan is implemented, entire traffic will be under control

and there will be no requirement of Deck cum Flyover. If the road admeasuring 12 meters adjacent to railway station on the west side i.e. from S.T. Bus stand to CIDCO bus stop Chendani Koliwada, which is provided in the sanctioned development plan is constructed, entire traffic will be under control. Respondent 1-Corporation has not even attempted to construct the roads and the railway station at Kopri as per the sanctioned plan on account of which 50% of the traffic will be automatically diverted.

14. The petitioners contend that the Deck will be constructed adjoining Railway Station at a height of 4.5 meters occupying 3000 sq. meters area. It will be constructed on pillars approximately 25 numbers below the Deck and will occupy around atleast 100 sq. meters area against each pillar. Thus, there will be no scope for free access to ambulances and no access for fire brigade vans. The map prepared by respondent 1-Corporation does not even provide for any access to private vehicles, ambulances and fire brigade vans. No safety measures are provided for implementing the said project and on the contrary existing facilities are sought to

be banished. The Flyover will cover a stretch of 800 meters and there is no provision for stops in between. Boarding places/platforms will be constructed at a height of 4.5 meters so senior citizens and the disabled will have to stop use of bus services. Since, there is no provision for private vehicles, they will also be prohibited from entering the area around Railway Station. According to the petitioners, the action of respondent 1-Corporation of proposing to construct a Deck cum Flyover by refusing to implement the sanctioned development plan is not only illegal and violative of the mandatory provisions of the MRTP Act but also amounts to defeating performance of the obligatory duties under section 63 of the MRTP Act. According to the petitioners, in the development plan for city of Thane, 17 major roads are provided. As per the information given by respondent 1-Corporation in the Summary dated 4/5/2006 most of the proposed roads are not even attempted to be constructed by respondent 1-Corporation. The petitioners contend that the RCC construction of the Deck cum Flyover will be on pillars. Each pillar will admeasure about 2.5 meters. They will be constructed in the middle of the roads or at

the place of divider. That will reduce the width of the road.

15. According to the petitioners, the construction of the Flyover near the M.H. High School will block the open space near the school entrance. Respondent 1-Corporation has not carried out any survey before passing the said resolution. Respondent 1-Corporation has not utilized all the reservations for public roads and the proposed Railway Station at Kopri as per the sanctioned development plan. Instead of utilizing the available funds for the development of roads as per the reservations in the development plan, respondent 1-Corporation has decided to utilize the huge funds for construction of the Deck cum Flyover which will not only cause inconvenience to the public at large but also cause serious distraction to the Masunda Lake, M.H. High School as well as various residential and commercial buildings which also include hospitals. According to the petitioners, if the proposed project is implemented, there will also be a serious damage to the surroundings and distraction to the heritage sites. The project report, summary and resolutions of respondent 1-Corporation do

not show any particulars of heritage clearance and environment clearance. According to the petitioners, Thane city lacks the basic infrastructure. Instead of implementing the sanctioned development plan, respondent 1-Corporation is spending a huge amount of Rs.30.50 crores for the construction of the said project overlooking the lack of basic infrastructure for the citizens of Thane city. According to the petitioners, the difficulties as stated in the said resolution can be effectively solved by implementing the existing sanctioned development plan by constructing road from S.T. Stand at Station Road to CIDCO Bus Stop and from S.T. Stand to Court Naka via Jambhli Naka and the Railway Station at Kopri. The petitioners contend that in fact, if the said project is implemented, the above roads will be of no use. The drawings prepared by respondent 1-Corporation presuppose that the said roads will never be constructed. According to the petitioners, if the project is implemented, the same will be a permanent feature and there will be no scope for any modification or any positive change in traffic system. The project is thus a permanent damage to the existing system.

16. The petitioners further contend that another project provided in the sanctioned development plan regarding construction of Road Over Bridge for railway crossing is not implemented by respondent 1-Corporation when in fact it has paid an amount of Rs.14 lacs in the year 1985-86 for the said project. Respondent 1-Corporation has spent about Rs.5 crores for constructing a six lane road on Thane creek known as Kalwa – Saket – Balkum Road. This road is constructed in a no development zone by completely damaging the drainage system. According to the petitioners, the action on the part of respondent 1-Corporation of spending huge amounts illegally, indicates that it is always acting against the interest of citizen. Only in the year 2000, road in front of the Railway Station was concretized by spending Rs.2 crores and now the same will be destroyed by constructing Deck cum Flyover. According to the petitioners, the construction of the said Deck cum Flyover and the resultant congestion will interfere with the right of free movement of the citizen and it will be violative of Articles 14 and 19 of the Constitution of India. The said resolution and the manner in which

respondent 1 is trying to implement the same being arbitrary is violative of Article 14 of the Constitution of India.

17. In the circumstances, the petitioners have approached this court praying for the aforementioned reliefs.

18. On 25/7/2007, the learned counsel appearing for both sides agreed that the map submitted by the respondents should be the basic map for determining the various disputes raised in the present writ petition. The said map is on record and for the purposes of identification, the said map was marked “X”.

19. Before we proceed to discuss the merit or otherwise of the above contentions raised on behalf of the parties, it would be appropriate for the court to state certain events that have occurred during the pendency of this petition. The Station Area Improvement Scheme is a project based upon the Resolution passed by the Corporation bearing No.258 dated 18/11/2006 under which it has proposed to construct Deck cum Flyover with an

intention to ease traffic congestion and improve the existing traffic circulation in larger public interest. Besides the construction of the Deck cum Flyover, it also proposes to introduce widening of the road, limited to one way traffic, and bifurcation of bus traffic from other vehicular traffic. On behalf of the Corporation, it is contended that the work of this project had already commenced even at the time of filing of this petition. The court thus has to take greater care while exercising its powers or judicial intervention and has to ensure that larger public interest does not suffer. The learned counsel for the petitioners during the course of hearing had argued that the proposed plan may result in causing greater problems than the one existing today rather than resolving the same. We must notice here that the stand of the respondent before the court was fair and objective. Some of the problems were considered by the authorities objectively and the proposed plan was even amended to some extent to minimize the public inconvenience. In relation to Point “C” of the map “X” at Khandelwal lane, it was stated that the width of the road would be kept at 36 feet and would not be widened any more so as to keep footpath intact. Another

modification was with regard to the distance between the end of the road and beginning of the ramp to the flyover from the end of CIDCO Road. It is one way traffic and there was possibility of traffic congestion and accident at the end of the ramp to the Deck cum Flyover. It was stated on behalf of the Corporation that the width portion shown in red and marked “Z” was agreed to be increased so as to ensure that the private traffic as well as taxies can conveniently operate in that area. Thus this passage would be free of traffic obstruction and not exposed to traffic hazard. Another undertaking given by the Corporation was that the road adjoining to Masunda Lake would be widened to a very limited extend so as to ease vehicular traffic without unnecessarily taking away the area of footpath. Thus there would be marginal difference between the existing footpath and footpath realigned by the Corporation. It was further agreed that the interest of the public for providing reasonable footpath shall be maintained and no green area on the said Masunda Lake shall be encroached upon. Of course, some part of the footpath is proposed to be taken for road widening and ease out traffic congestion. These are some of the

points which were considered by the Corporation and were accordingly amended in the map marked “X”. The respondents thus attempted to consider the reasonable demand made in the larger public interest and this is also one of the reasons that we do not find it necessary to interfere any further in the progress of the project. Now we would record detailed reasons on the other aspect of this PIL.

20. We have heard Ms. Godse, the learned counsel appearing for the petitioners, at great length. We have perused the petition and the affidavit in reply filed by the petitioners dated 27/6/2007. We have also heard Mr. Apte, the learned counsel appearing for respondent 1-Corporation and we have perused the affidavit in reply filed by Mr. Praveen P. Papalkar, the Executive Engineer of respondent 1-Corporation dated 4/4/2007 and two subsequent affidavits filed by Mr. Papalkar and the additional affidavit of the petitioners dated 9/7/2007. The learned counsel for the petitioners has reiterated the contentions raised in the petition. In support of her case, she has relied on the judgment of the Supreme Court in

Shabi Construction Company v. City & Industrial Development Corporation & Anr. (1995) 4 SCC 301. The learned counsel also relied on the judgment of the Supreme Court in ***Padma v. Hiralal Motilal Desarda & Ors. (2002) 7 SCC 564***. She submitted that in this case, the Supreme Court has held that the court hearing public interest litigation acts as sentinel on the qui vive discharging its obligations as custodian of constitutional morals, ethics and code of conduct. She submitted that this court should examine the present case keeping the principles laid down by the Supreme Court in mind and grant necessary reliefs to the petitioners.

21. The learned counsel appearing for respondent 1-Corporation strenuously opposed the petitioners' contentions. He submitted that the project which respondent 1-Corporation proposes to implement is of great public importance. He submitted that the action taken by respondent 1-Corporation is perfectly legal. He submitted that Mr. Papalkar, the Executive Engineer of respondent 1 has in his affidavits explained as to why the project is undertaken. He has also set out the details of the procedure

followed by respondent 1-Corporation. He submitted that the affidavits of Mr. Papalkar establish that respondent 1-Corporation has not flouted any procedure and its action is neither arbitrary nor mala fide. He submitted that the petitioners are using the present PIL to stall the project of great public importance. If the said project is stalled, great hardship will be caused to the citizens and this court should not allow the petitioners to succeed in their attempt of interfering with a sound policy decision. In support of his submissions, the learned counsel relied upon the judgments of the Supreme Court in ***G.B. Mahajan & Ors. v. The Jalgaon Municipal Council & Ors., 1991(3) Bom.C.R. 139, Balco Employees' Union (Regd.) v. Union of India & Ors. (2002) 2 SCC 333*** and ***Federation of Railway Officers Association & Ors. v. Union of India, (2003) 4 SCC 289***. He also relied on a Full Bench decision of this court in ***Bombay Environmental Action Group & Anr. v. State of Maharashtra & Ors. 2001(4) Mh.L.J. 260***.

22. Challenge raised by the petitioners is to a policy decision.

The principles which should guide the courts while dealing with a challenge to the policy decision have been laid down by the Supreme Court in several cases. Policy decisions are taken after obtaining experts' advice. They are preceded by due deliberation. Unless they are opposed to law and smack of malafides, courts would be slow in interfering with them.

23. In ***Narmada Bachao Andolan v. Union of India, JT 2000 (Suppl. 2) SC 6***, the Supreme Court has, while dealing with PIL challenging a policy decision observed as under :

> *"In respect of public projects and policies which are initiated by the Government, the Courts should not become an approving authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy, welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those area which are the functions of the Executive. For any project which is approved after due deliberation, the Court should refrain from being asked to review the decision just because a petitioner in filing a PIL, alleges that such a decision*

> *should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision, it is then not the function of the Court to go into the matter afreshly and, in a way, sit in appeal over such a policy decision."*

24. The present case will have to be examined in the light of the above observations of the Supreme Court.

25. From the affidavits of Shri Papalkar, Executive Engineer of respondent 1-Corporation, it appears that respondent 1-Corporation has passed Resolution No.226 dated 8/10/2003 approving appointment of an expert for studying the traffic problem of the area around the Thane Railway Station and to find solution for problems created by traffic congestion. Further Resolution No.14 dated 16/6/2004 was passed by the General Body of respondent 1-Corporation, inter alia providing for approaching railways for its approval; for obtaining expert advice, for preparing necessary designs and drawings, detailed estimates, etc. and for inviting tenders for the same. Standing Committee vide its

Resolution No.81 dated 8/4/2005 appointed M/s. Consultancy Engineering Services India Pvt. Ltd. as experts. M/s. Consultancy Engineering Services India Pvt. Ltd. submitted their report and after detailed study, the Flyover cum Deck project was approved and sanctioned. Respondent 1-Corporation' sdecision is, therefore, not arbitrary and mala fide inasmuch as it is taken after due deliberation and in accordance with law.

26. It is stated in the affidavits that Thane Railway Station is a major Railway Station in Thane – Kalyan Section of the Central Railway. During the past few years, Thane city has seen manifold development. The population has increased phenomenally. With increase in population, number of vehicles in the city are also increasing. The development of Thane city is circular type with Thane Railway Station as focal point. Large number of citizens come to Railway Station every day. This has resulted in increase in the number of vehicles entering the Thane Railway Station area. Around 4.80 lacs of commuters travel each day from Thane Railway Station and the number of commuters is expected to reach

upto 20.31 lacs in year 2031. Intermediate Passenger Transport (IPT) Modes viz. Public transport buses, auto-rickshaw, taxis, private vehicles, etc. operate together from the said limited circulation space in front of the Railway Station. There is large crisscross movement in the IPT modes and pedestrian traffic. Crisscross movement results in frequent traffic jams in the Railway Circulation Area. Due to such traffic jams, the vehicles get queued up on the roads approaching Thane Station area resulting in collapse of traffic circulation in entire central zone of the city. To avoid such situation, quick dispersal of traffic from Railway Circulation Area is necessary. Respondent 1-Corporation has, therefore, decided to implement Thane Railway Station Area Traffic Improvement Scheme (SATIS). As per SATIS, the heavy vehicular traffic comprising public transport buses shall be plying on Flyover, light motor vehicle (LMV) traffic comprising auto-rickshaws, taxis, private vehicles, etc. shall ply at ground level and separate Foot Over Bridges shall be provided for pedestrians. Since all the modes of traffic shall be separated from each other, the conflicts in the form of crisscross movement shall be eliminated. Resultantly,

the main cause of traffic jams in the Railway Station Circulation Area and consequently in central zone of the city will be eliminated.

27. The affidavits further state that as per SATIS, Flyover shall be constructed from ST stand side. It shall be widened in front of Railway Station to accommodate bus bays. Fifteen bus stops shall be provided on this widened portion whereas presently there are only eight bus stops in existence. Capacity of the public transport shall be almost doubled. The widened Flyover shall be gradually converted into standard Flyover from Dr. Ambedkar Chowk and shall extend upto Masunda lake on Shivaji Path. A descending arm shall be provided in Dada Patil Marg for buses going towards Gokhale Road. Pick-up points for auto-rickshaws, taxis and private vehicles shall be provided below the deck and the same shall be plying below the flyover at ground level.

28. Replying to the objection raised about height of the Flyover, it is stated that the height of the flyover has to be restricted to 4.50 meters in station area because if vertical clearance as per IRC

guidelines (5.50m) is to be maintained, the top of deck shall be at the level of 6.50m. and in that case, the length of approaches required shall be more (by about 40m.) It is not possible to accommodate the additional length of flyover within the restricted space available in the Station Circulation area and if length of approaches is increased that will also increase the cost of the project. Hence, the vertical clearance shall be maintained to 3.50m. Within the said clearance auto-rickshaws, taxis and emergency vehicles viz. ambulance, etc. shall ply easily. Therefore, the height of flyover is restricted in consideration of proposed MRTS (Ring Railway) project.

29. As regards arrangement for fire fighting vehicles, it is stated in the affidavits that Resolution No.14 dated 16/6/2004 provides for a lane for emergency vehicles. The lane with minimum vertical clearance of 3.50m shall be provided specially for emergency vehicles like fire brigade and ambulance, etc. Arrangements are also made in the SATIS for fire fighting. Methodology which shall be adopted to combat emergencies is stated to be as under :

a) Wet Riser System will be proposed below deck for fire.

b) Thane Fire Brigade has two mini fire engines having maximum overall height of 2.85 m. In addition to this, two modified versions of fire vehicles for combating fire below the deck are being procured.

c) Regular fire vehicles can be used from bridge level itself for combating fire above bridge deck level as well as part portion below bridge deck level.

Procedure for procuring additional emergency tenders and one low / short water tender has already been initiated. Copies of supporting documents have been annexed to the affidavit.

30. The affidavits also meet the problems of the commuters. It is stated that the Foot Over Bridge on Kalyan end of the Railway Station shall be extended towards Ashok Talkies and Foot Over Bridge on Mumbai end shall be extended towards Naikwadi Road off Gokhale Road. Both the Foot Over Bridges shall be interconnected. Commuters coming from platform Nos.3 to 9 shall be ascending to Railway Foot Over Bridges. Commuters who do not need any vehicular mode would leave the station area via the extended Foot Over Bridge without conflicting with any vehicular traffic (49%). Commuters, who want to use bus would descend to Bus bays at 4.50m level (34%). Commuters who want to catch auto-rickshaw, they will descend right upto ground level (15%). Thus, the total number of commuters coming to ground level shall be limited. Therefore, at present pedestrian subways for going upto auto-rickshaw and taxi pick-up point are not required. However, necessary provisions have been made for the same and construction can be carried out by suitable technology such as box pushing, etc. in future. Only the commuters coming from platform

Nos.1 and 2 shall have to climb upto 4.50m level to catch the bus.

31. The affidavits state in what manner traffic congestion will be reduced. It is stated that Flyover bridge in front of M.H. High School on Shivaji Path shall be aligned on central verge of the road. Vertical clearance below the bridge shall be 5.00m. Due to construction of bridge, the traffic intensity at ground level shall be reduced. Buses on M.H. High School side shall be plying on flyover. Due to reduced intensity of traffic at ground level, the movement of the school children shall be quick and safe. The said Scheme is complementary to the Ring Railway. It would be helpful in de-congesting the station area under the additional stress of Ring Railway. On every location of solid ramp, slip road of minimum one lane width as per IRC guideline has been provided.

32. It is further stated in the affidavit that construction of DP Roads from ST bus stand to CIDCO and Ashok Talkies towards Court Naka will be helpful in de-congesting the Thane Railway Station area upto certain extent but the development of the said DP

roads shall not be helpful in eliminating the traffic problems in station circulation area fully as it does not serve the basic requirement of segregating the traffic.

33. The affidavits further state that respondent 1-Corporation has made necessary reservations for land required for new Railway Station. The land use shall not be altered in the project as the existing roads shall not be closed for traffic nor any footpaths shall be encroached upon. Functionality of the land use shall be enhanced. There will be no destruction of the newly constructed concrete road because the only areas required for pile caps and areas necessary for regrading shall be reconstructed. Shivaji Path has been widened upto DP width. Footpath on both sides are in existence except where right of way does not permit the same. Footpath on Masunda lake side shall be retained and citizens shall not be prevented from using it. Erstwhile recreational use of land as per development plan shall not be prohibited and, therefore, it is not necessary to initiate proceedings under section 37 of the MRTP Act.

34. It is categorically stated in the affidavits that the Heritage committee has cleared SATIS.

35. As regards capital requirement, it is stated in the affidavits that the Central Government shall be providing financial assistance to the tune of 35% of the cost of project, 15% shall be borne by the State Government and 15% shall be raised as soft loan from MMRDA. The rest shall be financed through Municipal funds. The portion of the said project that is to be implemented on Railway land is minor as compared to entire scope of work. As per the provisions of section 207, 208 and 209 of the Bombay Provincial Corporation Act, 1949, SATIS can be implemented with concurrence from Railways.

36. It can be gathered from the affidavits that the Central Sanctioning and Monitoring Committee established under the Chairmanship of Secretary, Ministry of Urban Development, Government of India in its meeting dated 8/12/2006 has sanctioned

10 projects out of various projects all over India, considering technical feasibility, necessity and other aspects. It shows that SATIS is not only necessary but is required to be urgently implemented in public interest.

37. It appears from the affidavit of Mr. Papalkar that SATIS does not introduce any additional mode of traffic and the erstwhile land use of the area as road is kept unaltered. Care has been taken to make SATIS complementary to Ring Railway Project and this is mentioned in General Body Resolution No.14 dated 16/6/2004. The State Government has already sanctioned SATIS under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and recommended it to the Central Sanctioning and Monitoring Committee (JNNURM). The CS & MC, JNNURM has approved the said Scheme and they would be providing grant to the extent of 50% of the project cost. Thus SATIS shall not affect the Ring Railway Project or defeat or curtail or affect the powers of the State Government.

38. In the development plans, land use of some of the lands on which Ring Railway Project is to be implemented, is shown for purposes other than transport facilities. For implementing Ring Railway project, the land use of such lands will have to altered to transport facilities. Hence, proceedings have been initiated under section 37 of the MRTP Act. However, under SATIS, no additional or new mode of traffic is introduced. The erstwhile land use of the area as road is kept unaltered. Therefore, proceedings need not be initiated as per section 37 of the MRTP Act. Construction of Ring Railway above road will change the character of the sanctioned development plan. For the implementation of SATIS, Work Order has already been issued in favour of M/s. Nagarjuna Construction Company on 9/3/2007 after following due procedure and the Contractor has already started work after mobilizing necessary machinery and manpower. The contractor has incurred considerable expenditure and has invested huge amounts for the work of SATIS.

39. The Road Over Bride is for communication between Thane

East and Thane West, which are on the either side of the Railway line and the said Road Over Bridge has nothing to do with traffic in the station area. Thus the sanctioned development plan does not indicate Road Over Bridge. However, the ramp of SATIS on Dada Patil Marg ends well before the approach roads to the proposed location of East-West Road Over Bridge. Hence, it would not amount to any change in the nature of sanctioned development plan. Losses, if any, shall be recuperated through the socio-economical benefits to be accrued from SATIS in the form of benefits from VOT (Value Of Time) and VOD (Vehicle Operating Cost). So called loss and inconvenience are transitory. The excavation is undertaken for laying foundations and such other purposes like improvement of drainage and shifting of utility services such as sewerage lines, MTNL cables, MSEB cables, etc. of limited area.

40. Before SATIS, ST/TMT buses were not allowed from Thane Station to enter Subhash Path (via Ashok Talkies) i.e. outflow from Thane Station was not allowed on this road. After SATIS, no traffic

will be allowed from Thane Station to enter Subhash Path. However, some routes of TMT and ST buses would be allowed to enter the station area through Subhash Path. Private vehicles will also be permitted to reach Thane Station via Subhash Path.

41. As regards the query made by this court whether the width of ramp can be increased on S.T. Stand side, it is stated that presently the average width of road that would be available from the edge of solid ramp of property line is 6.20m. There are two structures in the solid approach portion. One is Sahyadri Chambers and other is Kohinoor Corner. Sahyadri Chambers has been constructed as per development plan. The road width available in this portion is 8.20m to 5.50m i.e. on an average of 6.85m. Beyond that there is property of Kohinoor Corner. Presently, the road widths available in this portion are 4.50m. To 6.00m. i.e. on an average of 5.25m. The said property is proposed to be redeveloped as per VP No.2002/135. The proposal has been sanctioned by Town Planning Department of respondent 1-Corporation. After redevelopment of the said property, the road

widths available in this section shall be from 5.50m to 9.00m. i.e. on an average of 7.25m. Thus the width available at solid ramp portion will be on an average of 7.00m, which will cater to the entire traffic in case of emergency as well as traffic from proposed CIDCO D.P. Road. Thus there will be substantial increase in the width of the said road.

42. The gist of the affidavits of Mr. Papalkar, Executive Engineer of respondent 1-Corporation indicates that SATIS is undertaken after an indepth study of problems of traffic congestion faced by commuters, particularly residents of Thane. Consultants engaged by respondent 1-Corporation have taken into consideration the number of commuters who travel from Thane Railway Station everyday so also the number of vehicles which enter the Thane Railway Station Area everyday. Possible increase in their number by 2031 considering the fast development of Thane is also taken into account. The cost aspect and the possibility of recuperating the losses, if any, in the near future in the form of value of time (VOT) and vehicle operating cost (VOC) have been kept in mind.

Attention is focussed on the possible clash between SATIS and Ring Railway Project and care is taken to ensure that SATIS is complementary to Ring Railway Project. Lands meant for recreational purposes, open spaces, walkways are not usurped to the detriment of people. Access is provided for emergency vehicles and arrangement is made to meet fire hazards. There is no violation of rules and regulations. The required procedure has been followed. Besides work order has already been issued in favour of M/s. Nagarjuna Construction Company on 9/3/2007. The contractor has mobilized necessary machinery and manpower. Considerable expenditure has already been incurred and huge amounts have been invested. We have no reason to disbelieve these statements made on oath by Mr. Papalkar, the Executive Engineer of respondent 1-Corporation. We are, therefore, of the considered opinion that SATIS cannot be stalled. The action of the authorities is neither arbitrary nor malafide. SATIS has public good and convenience as it's object and the modalities have been worked out by experts. In such circumstances, court's interference is not warranted. This is not a case where we should impinge upon

the powers of the authorities to carry out their policy decision. It is not for us to review the policy decision.

43. In this connection, we may refer to the judgment of the Full Bench of this court in ***Bombay Environmental Action Group's case (supra)***. Public Interest Litigation petition was filed challenging construction of a Flyover inter alia on the ground of ecological imbalance. The Full Bench relied on ***Narmada Bachao Andolan's case (supra)*** and held that construction of Flyover would lead to traffic management. The Full Bench observed that many a time, balance has to be struck between two conflicting decisions. The Full Bench further observed that the conception and decision to undertake a project is to be regarded as a policy decision. Once a considered decision is taken after through study, it is for the Government to decide how to do its job. When Government puts a system in place and it cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner, it was envisaged. With these observations, the Full Bench repelled the challenge.

44. We may also refer to the judgment of the Supreme Court in ***G.B. Mahajan's case (supra)***. In that case, the petitioners had assailed certain contracts of the Municipal Council of Jalgaon with a developer for execution of a project for “Administrative Building” and a “Commercial Complex” on the land belonging to the Municipal Council. The Supreme Court dismissed the petition inter alia holding that matters of economic policy lack adjudicative disposition or legal limits on power. The Supreme Court made it clear that unless there is demonstrable pejorative environmental implication or abuse of power the council cannot interfere. The Supreme Court went on to recognise administrator's right to trial and error, as long as both trial and error are bonafide and within limits of authority.

45. In ***Balco's case (supra)***, the Supreme Court held that unless a policy decision is contrary to any statutory provisions or the constitution, the court cannot examine it. Court cannot examine relative merits of different economic policies and strike down a

policy merely on the ground that another policy would have been fairer and better.

46. In ***Federation of Railway Officers' Association's case (supra)***, the challenge was to the formation of seven railway zones. The Supreme Court dismissed the Special Leave Petition holding that judicial review of a policy evolved by the Government is limited. The Court would leave the matters affecting policy and requiring technical expertise for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or is arbitrary or irrational or there is abuse of power the court will not interfere with it. Examined in the light of the above judgments of the Supreme Court and of the Full Bench of this court, we are of the opinion that the petitioners have not made out any case for interference with SATIS.

47. Reliance placed by the petitioners on ***Shahi Constructions' case (supra)*** is misplaced. In that case, the Planning Authority had entered into an agreement with private builder which provided for

increased FSI. Prior sanction of State Government was a sine qua non for final development plan as well as for minor modifications. Subsequent change in FSI by Planning Authority without prior approval was held to be illegal. In our opinion, this judgment will have to be confined to its own facts and will not be applicable to the present case because here there is no arbitrariness or breach of legal provisions or procedure.

48. Judgment of the Supreme Court in ***Padma's case (supra)*** also does not help the petitioners. In that case, a public interest litigation petition was filed challenging the procedure adopted by City & Industrial Development Corporation (CIDCO) for disposal of land by bulk sale. Allotment of plots to various parties was found vitiated on various grounds. The Supreme Court concurred with this court and observed that the bulk sale was departure from the policy of CIDCO of serving people on “no profit no loss” basis. The decision was not of the Board. It was not accompanied by reasons. The bulk sale was found to be vitiated by several irregularities and was found to be anathema to CIDCO's objectives.

It is against this background, that the Supreme Court held that the impugned sales were vitiated. The Supreme Court observed that while hearing a public interest litigation, the constitutional court acts as a sentinel on the qui vive discharging its obligation as custodian of the constitutional morals, ethics and code of conduct. The court is obliged to see while scrutinizing the conduct and activities of a public body constituted with the avowed object of serving the society that its activities bear no colour except being transparent, are guided with the object of public good and are within the four corners of law governing the same. The Supreme Court further observed that holder of every public office holds a trust for public good and therefore his actions should be above board.

49. We are conscious of our obligation as custodian of the constitutional morals, ethics and code of conduct, emphasized by the Supreme Court in ***Padma's case (supra)***. We have examined the policy decision of respondent 1-Corporation from all angles. We are unable to locate any irregularities in procedure or any violation of the laws or any malafides. We have given detailed

reasons for this conclusion of ours. In the ultimate analysis, therefore, we are of the opinion that there is no merit in the petition. The petition deserves to be dismissed and is accordingly dismissed.

[CHIEF JUSTICE]

[SMT. RANJANA DESAI, J.]